

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

HOUSE ENROLLED ACT No. 1367

AN ACT to amend the Indiana Code concerning property.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 32-8-3-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. (a) That contractors, subcontractors, mechanics, lessors leasing construction and other equipment and tools, whether or not an operator is also provided by the lessor, journeymen, laborers and all other persons performing labor or furnishing materials or machinery, including the leasing of equipment or tools used, for the erection, altering, repairing or removing any house, mill, manufactory, or other building, bridge, reservoir, systems of waterworks, or other structures, or for construction, altering, repairing, or removing any walk or sidewalk, whether such walk or sidewalk be on the land or bordering thereon, stile, well, drain, drainage ditch, sewer or cistern or any other earth-moving operation may have a lien separately or jointly upon the house, mill, manufactory or other building, bridge, reservoir, system of waterworks or other structure, sidewalk, walk, stile, well, drain, drainage ditch, sewer or cistern or earth which they may have erected, altered, repaired, moved or removed or for which they may have furnished materials or machinery of any description, and, on the interest of the owner of the

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lot or parcel of land on which it stands or with which it is connected to the extent of the value of any labor done, material furnished, or either, including any use of such leased equipment and tools, and all claims for wages of mechanics and laborers employed in or about any shop, mill, wareroom, storeroom, manufactory or structure, bridge, reservoir, system of waterworks or other structure, sidewalk, walk, stile, well, drain, drainage ditch or cistern or any other earth-moving operation shall be a lien on all the machinery, tools, stock or material, work finished or unfinished, located in or about such shop, mill, wareroom, storeroom, manufactory or other building, bridge, reservoir, system of waterworks, or other structure, sidewalk, walk, stile, well, drain, drainage ditch, sewer, or cistern, or earth or used in the a business thereof; and should

(b) If the person, firm, limited liability company, or corporation be described in subsection (a) is in failing circumstances, the above mentioned claims described in subsection (a) shall be preferred debts whether a claim or notice of lien has been filed or not.

(c) A provision or stipulation described by this subsection may only be included in a construction contract for the construction, alteration, or repair of the following:

(1) A Class 2 structure (as defined in IC 22-12-1-5) or an improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5).

(2) Property that is:

(A) owned, operated, managed, or controlled by a public utility (as defined in IC 8-1-2-1), municipally owned utility (as defined in IC 8-1-2-1), joint agency (as defined in IC 8-1-2.2-2), rural electric membership corporation formed under IC 8-1-13-4, or not-for-profit utility (as defined in IC 8-1-2-125) regulated under IC 8; and

(B) intended to be used and useful for the production, transmission, delivery, or furnishing of heat, light, water, or power to the public.

No provision or stipulation in the contract of the owner and principal contractor that no lien shall attach to the real estate, building, structure or any other improvement of the owner shall be valid against subcontractors, mechanics, journeymen, laborers or persons performing labor upon or furnishing materials or machinery for such property or improvement of the owner, unless the contract containing such provision or stipulation shall be in writing, and shall contain specific reference, by legal description of the real estate to be improved and shall be acknowledged as provided in case of deeds and filed and



recorded in the recorder's office of the county in which such real estate, building, structure or other improvement is situated not more than five (5) days after the date of execution of such contract. The contract herein provided for shall be without effect upon labor, material or machinery supplied prior to the time of the filing with the recorder of said contract. The recorder shall record such contract at length in the order of time of its reception in books provided by him for that purpose, and the recorder shall index the same in the name of the contractor and in the name of the owner, in books kept for that purpose, and said recorder shall receive therefor a fee such as is provided for the recording of deeds and mortgages in his office.

(d) Any person, firm, partnership, limited liability company, or corporation ~~who that~~ sells or furnishes on credit any material, labor or machinery for the alteration or repair of any owner-occupied single or double family dwelling or the appurtenances or additions ~~thereto, to the dwelling,~~ to any contractor, subcontractor, mechanic, or anyone other than the occupying owner or ~~his the owner's~~ legal representative shall furnish to the occupying owner of ~~said the~~ parcel of land where the material, labor or machinery is delivered, a written notice of the delivery or work and of the existence of lien rights, within thirty (30) days from the date of first delivery or labor performed. The furnishing of ~~such the~~ notice shall be a condition precedent to the right of acquiring a lien upon ~~such the~~ lot or parcel of land or the improvement ~~thereon: on the lot or parcel of land.~~

(e) Any person, firm, partnership, limited liability company, or corporation ~~who that~~ sells or furnishes on credit any material, labor or machinery, for the original construction of a single or double family dwelling for the intended occupancy of the owner upon whose real estate the construction takes place to any contractor, subcontractor, mechanic, or anyone other than the owner or ~~his the owner's~~ legal representatives shall furnish the owner of the real estate as named in the latest entry in the transfer books described in IC 6-1.1-5-4 of the county auditor, or if IC 6-1.1-5-9 applies, the transfer books of the township assessor with a written notice of the delivery or labor and the existence of lien rights within sixty (60) days from the date of the first delivery or labor performed and shall file a copy of the written notice in the recorder's office of the county within sixty (60) days from the date of the first delivery or labor performed. The furnishing of such notice shall be a condition precedent to the right of acquiring a lien upon ~~such the~~ real estate or upon the improvement constructed ~~thereon: on the real estate.~~

(f) ~~No~~ A lien for material or labor in original construction ~~shall may~~

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not attach to real estate purchased by an innocent purchaser for value without notice, ~~provided said if the~~ purchase is of a single or double family dwelling for occupancy by the purchaser, unless notice of intention to hold ~~such the~~ lien ~~be is~~ recorded as provided in this chapter prior to the recording of the deed by which ~~such the~~ purchaser takes title.

SECTION 2. IC 32-8-3-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3. (a) **Except as provided in subsection (b), a person who wishes to acquire a lien upon any property, whether the claim is due or not, shall file in the recorder's office of the county at any time within ninety (90) days after performing labor or furnishing materials or machinery described in section 1 of this chapter a sworn statement in duplicate of the person's intention to hold a lien upon the property for the amount of the claim.**

(b) **This subsection applies to a person that performs labor or furnishes materials or machinery described in section 1 of this chapter related to a Class 2 structure (as defined in IC 22-12-1-5) or an improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5).** Any person who wishes to acquire a lien upon any property, whether the claim is due or not, shall file in the recorder's office of the county at any time within sixty (60) days after performing labor or furnishing materials or machinery described in section 1 of this chapter, a sworn statement in duplicate of the person's intention to hold a lien upon the property for the amount of the claim.

(c) The statement **under subsection (a) or (b)** must specifically set forth:

- (1) the amount claimed;
- (2) the name and address of the claimant and the name of the owner;
- (3) the latest address of the owner as shown on the property tax records of the county; and
- (4) the legal description, street and number, if any, of the lot or land on which the house, mill, manufactory or other buildings, bridge, reservoir, system of waterworks or other structure may stand or be connected with or to which it may be removed.

The name of the owner and legal description of the lot or land will be sufficient if they are substantially as set forth in the latest entry in the transfer books described in IC 6-1.1-5-4 of the county auditor or, if IC 6-1.1-5-9 applies, the transfer books of the township assessor at the time of filing of the notice of intention to hold a lien. The recorder shall

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mail first class one (1) of the duplicates to the owner named in the notice within three (3) business days after recordation and post records as to the date of this action. The notice shall be addressed to the latest address of the owner as specifically set out in the sworn statement of the person intending to hold a lien upon the property. The recorder shall be entitled to a fee of two dollars (\$2) to be collected from the lien claimant for each notice that is mailed.

~~(b)~~ (d) The statement required by subsection (a) **or (b)** may be verified and filed on behalf of a client by an attorney registered with the clerk of the supreme court as an attorney in good standing under the requirements of the supreme court.

SECTION 3. IC 32-8-3-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 5. (a) **As used in this section, "lender" refers to:**

- (1) **an individual;**
- (2) **a supervised financial organization (as defined in IC 24-4.5-1-301);**
- (3) **an insurance company or a pension fund; or**
- (4) **any other entity that has the authority to make loans.**

(b) The recorder shall record the notice, when presented, in the miscellaneous record book, for which the recorder shall charge a fee in accordance with IC 36-2-7-10. All liens so created shall relate to the time when the mechanic or other person began to perform the labor or furnish the materials or machinery. **and Except as provided in subsection (c), all liens** shall have priority over ~~all~~ liens suffered or created thereafter, except the liens of other mechanics and materialmen, as to which there shall be no priority.

(c) **The mortgage of a lender has priority over all liens under this chapter recorded after the date the mortgage was recorded to the extent of the funds actually owed to the lender for the specific project to which the lien rights relate. This subsection does not apply to a lien that relates to a construction contract for the development, construction, alteration, or repair of the following:**

- (1) **A Class 2 structure (as defined in IC 22-12-1-5) or an improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5).**
- (2) **Property that is:**
 - (A) **owned, operated, managed, or controlled by a public utility (as defined in IC 8-1-2-1), municipally owned utility (as defined in IC 8-1-2-1), joint agency (as defined in IC 8-1-2.2-2), rural electric membership corporation formed under IC 8-1-13-4, or not-for-profit utility (as**



defined in IC 8-1-2-125) regulated under IC 8; and
 (B) intended to be used and useful for the production, transmission, delivery, or furnishing of heat, light, water, or power to the public.

SECTION 4. IC 32-8-3-16 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 16. (a) This section applies to a construction contract for the construction, alteration, or repair of a building or structure other than the following:**

(1) A Class 2 structure (as defined in IC 22-12-1-5) or an improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5).

(2) Property that is:

(A) owned, operated, managed, or controlled by a public utility (as defined in IC 8-1-2-1), municipally owned utility (as defined in IC 8-1-2-1), joint agency (as defined in IC 8-1-2.2-2), rural electric membership corporation formed under IC 8-1-13-4, or not-for-profit utility (as defined in IC 8-1-2-125) regulated under IC 8; and

(B) intended to be used and useful for the production, transmission, delivery, or furnishing of heat, light, water, or power to the public.

(b) A provision in a contract for the improvement of real estate in Indiana is void if the provision requires a person described in section 1 of this chapter who furnishes labor, materials, or machinery to waive a right to a lien against real estate or to a claim against a payment bond before the person is paid for the labor or materials furnished.

(c) A provision in a contract for the improvement of real estate in Indiana under which one (1) or more persons agree not to file a notice of intention to hold a lien is void.

SECTION 5. IC 32-8-3-17 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 17. A provision in a contract for the improvement of real estate in Indiana is void if the provision makes the contract subject to the laws of another state or that requires that any litigation, arbitration, or other dispute resolution process on the contract occur in another state.**

SECTION 6. IC 32-8-3-18 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 18. (a) This section applies to a provider of labor, materials, or equipment under a contract for the improvement of**

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real estate that conditions the right of the provider to receive payment on the obligor's receipt of payment from a third person with whom the provider does not have a contractual relationship.

(b) This section does not apply to a construction contract for the construction, alteration, or repair of the following:

(1) A Class 2 structure (as defined in IC 22-12-1-5) or an improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5).

(2) Property that is:

(A) owned, operated, managed, or controlled by a public utility (as defined in IC 8-1-2-1), municipally owned utility (as defined in IC 8-1-2-1), joint agency (as defined in IC 8-1-2.2-2), rural electric membership corporation formed under IC 8-1-13-4, or not-for-profit utility (as defined in IC 8-1-2-125) regulated under IC 8; and

(B) intended to be used and useful for the production, transmission, delivery, or furnishing of heat, light, water, or power to the public.

(c) An obligor's receipt of payment from a third person shall not be a condition precedent to, or in any way limit, or be a defense to the provider's right to record or foreclose a lien against the real estate that was improved by the provider's labor, material, or equipment.

SECTION 7. [EFFECTIVE JULY 1, 1999] This act applies only to contracts and subcontracts entered into after June 30, 1999.

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